

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TOM SCHELL)	
Claimant)	
VS.)	
)	Docket No. 214,637
KANSAS LABOR, INC.)	
Respondent)	
AND)	
)	
CNA INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer on October 18, 1996.

ISSUES

Respondent contends that claimant has failed to establish that he suffered accidental injury arising out of and in the course of his employment and has failed to establish that he gave notice of an injury within ten days as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, the Appeals Board concludes that the Order should be affirmed.

Claimant testified that he injured his shoulder while pulling rope used to raise a roof which was part of his duties erecting prefabricated homes. He also testified that he notified Richard Jolly (his supervisor) and Kaye Dayhoff (personnel and safety director) that he had injured his left shoulder while pulling a top over. He notified both on the day of the incident.

In mid-June 1996 claimant was referred to Dr. Delgado for treatment. To establish the injury arose out of claimant's employment, claimant introduced the report of Dr. Koprivica which relates claimant's injury to the incident of May 9, 1996.

Respondent introduced the testimony of Kaye Dayhoff and reports from Dr. Delgado. Kaye Dayhoff testified that claimant told her his shoulder was hurting but did not relate it to work. Dr. Delgado did not have a history of work-related injury and for that reason concluded the injury was not work related.

On the basis of the above evidence the Administrative Law Judge awarded benefits. In so doing, he obviously found claimant's testimony to be credible. The Appeals Board gives deference to the Administrative Law Judge's evaluation of credibility of a witness who testified before the Administrative Law Judge. For this reason, the Appeals Board affirms the decision by the Administrative Law Judge awarding benefits in this case.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated October 18, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

c: Mitchell D. Wulfekoetter, Topeka, KS
Wade A. Dorothy, Lenexa, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director